Benging Motor Sdn Bhd v Superintendent of Lands and Surveys Sarikei

HIGH COURT (SIBU) — LAND REFERENCE NO 15–6 OF 2008
YEW JEN KIE J
19 MAY 2010

Land Law — Acquisition of land — Award — Objection against award — Whether respondent's original award erroneous and unreliable — Market value, assessment of — Whether bona fide sale of land afforded reliable evidence of its market value — Whether objector allowed compensation for interest incurred on loan — Whether objector entitled to compensation for relocation of motor vehicles — Whether objector entitled to costs of leveling work carried out on land — Whether objector entitled to damages for severance of land — Sarawak Land Code (CAP 81) ss 48, 56 & 60(2)

On 15 January 2004, Benging Motor Sdn Bhd ('the objector') purchased a plot of land of about 2,060 hectares in the Sarikei Land District ('the land') at the sum of RM1,628,425 for the purpose of setting up a teaching driving centre. The land was then acquired by the government under s 48 of the Sarawak Land Code ('the Land Code') for the purpose of constructing a proposed fire station at Sarikei and the objector was paid a total compensation of RM1,280,057 ('the original award') by the Superintendent of Lands and Surveys Sarikei ('the respondent'). This was the objector's reference pursuant to s 56 of the Land Code in respect of that acquisition and award. According to the objector after taking into account the purchase price of the land, the loan interest incurred on the bank loan, the cost of improving the land and the damage caused after the severance of the land, it had expended a total sum of RM1,975,634.86. As such, the objector contended that the award, which did not take into account the actual costs incurred by it, would result in it suffering a net loss of RM514,525.33. The objector's valuer testified that based on the comparable sales of the four properties in the same area, RM2,110,054.60 was a fair amount of compensation to the objector. The valuer's objector arrived at this sum after calculating the market value for the land to be RM715,906 per hectare. The valuer also testified that the general trend of land prices in the Sarikei District was on the rise due to a great demand. The respondent's valuer used a different method and evaluated the average value for the land at RM511,894.95 per hectare; he then concluded that this value rounded up to RM500,000 per hectare was a reasonable rate for compensation. In this case

the court had to determine the sole issue as to whether the original award was a fair and reasonable compensation.

Held, allowing claim in part with no order as to costs:

(1) It was found that the respondent's original award was erroneous and unreliable. The respondent's valuer, who was not the same person who was involved in the original award, was unable to explain why she had rounded up her evaluation of the land at RM511,894.95 per hectare to RM500,000 per hectare instead of RM512,000. In the absence of a reasonable explanation, the reasonable inference was that the respondent's valuer had chosen to evaluate the land at RM500,000 per hectare to fit into the valuation of the previous valuer (see para 19).

(2) Based on the authorities cited, it was found that where the compulsory acquisition was within a reasonable time of the land being purchased by the owner, the bona fide sale of the land afforded the most reliable evidence of its market value. This rule would apply to the present case where the objector had purchased the land on 15 January 2004 and the acquisition was in November 2006 (see paras 23–26 & 28).

(3) The objector's evaluation of the land at RM715,906 per hectare was high and unreasonable because it had not taken into account the value of the building and the crops. The adjusted value of the land at RM660,800 was acceptable because an increase of 13% over 33 months was reasonable (see paras 29 & 31).

(4) As there was no provision in the Land Code which allowed compensation for the interest incurred on a loan, the interest claimed by the objector was disallowed. The compensation for the relocation of the motor vehicles was also disallowed because the objector had not adduced proof to show that he had applied for a variation of the land conditioned for agriculture to be used for a commercial purpose. However, the objector was entitled to the costs of leveling work carried out on the land as this was an improvement to the land that would enhance the value of the land that he was entitled to compensation under s 60(2) of the Code. Further the objector was entitled to damages for the severance of the land as he had suffered loss as a result thereof. Thus the objector had proven that the original award was inadequate and he was entitled to compensation in the sum of RM1,457,724.80 which took into account the cost of land leveling of RM68,000 and loss of severance of RM9,284.80 (see paras 33–35, 38–39, 41 & 41(a)).

[Bahasa Malaysia summary

Pada 15 Januari 2004, Benging Motor Sdn Bhd ('pembantah') membeli satu plot tanah seluas 2,060 hektar di Tanah Daerah Sarikei ('tanah tersebut') sejumlah RM1,628,425 bagi tujuan membina pusat belajar memandu. Tanah

tersebut kemudiannya diambil kerajaan di bawah s 48 Kanun Tanah Sarawak ('Kanun Tanah tersebut') bagi tujuan membina stesyen api di Sarikei dan pembantah telah dibayar pampasan sebanyak RM1,280,057 ('award asal') oleh Superintenden Tanah dan Surveys ('responden'). Ini merupakan rujukan pembantah berikutan s 56 Kanun Tanah tersebut berkaitan pengambilan dan award. Menurut pembantah, setelah mengambilkira harga belian tanah, faedah pinjaman ke atas pinjman bank, kos memulihara tanah dan kerosakan akibat daripada pelepasan tanah tersebut, ia telah membelanjakan sejumlah RM1,975,634.86. Oleh itu, pembantah mempertikaikan award itu, yang tidak mengambilkira kos sebenar yang telah ditanggungnya, yang mengakibatkan ia mengalami kerugian sejumlah RM514,525.33. Penilai pembantah memberi keterangan bahawa berdasarkan perbandingan jualan keempat-empat hartanah di kawasan yang sama, RM2,110,054.60 merupakan jumlah pampasan yang berpatutan kepada pembantah. Penilai pembantah memperoleh nilai ini setelah mengira nilai pasaran bagi tanah tersebut pada RM715,906 sehektar. Penilai juga memberi keterangan bahawa trend biasa harga tanah di kawasan Sarikei naik disebabkan permintaan yang besar. Penilai responden menggunakan kaedah lain dan menaksir nilai purata tanah tersebut pada RM511,894.95 seekar; dia kemudiannya memutuskan bahawa nilai ini dibundarkan kepada RM500,00 seekar adalah kadar pampasan yang berpatutan. Dalam kes ini, mahkamah harus mempertimbangkan isu utama iaitu sama ada award asal merupakan pampasan yang adil dan wajar.

Diputuskan, membenarkan sebahagian tuntutan pembantah tanpa perintah kos:

(1) Didapati bahawa award asal responden adalah silap dan tidak boleh dipercayai. Penilai responden, yang merupakan orang yang tidak terlibat dengan award asal, tidak boleh menjelaskan mengapa dia membundarkan taksirannya ke atas tanah tersebut pada RM511,894.95 seekar kepada RM500,000 seekar dan bukannya kepada RM512,000. Dalam ketiadaan penjelasan wajar, inferens yang wajar adalah penilai responden telah memilih untuk menaksir tanah tersebut pada RM500,000 seekar untuk menyamai penilaian penilai sebelumnya (lihat perenggan 19).

(2) Berdasarkan autoriti-autoriti yang dirujuk, didapati bahawa apabila pengambilan wajib dilakukan dalam waktu yang wajar tanah itu dibeli oleh pemilik, penjualan tanah bona fide itu memberikan keterangan yang paling kukuh tentang nilai pasarannya. Peraturan ini terpakai dalam kes ini di mana pembantah telah membeli tanah tersebut pada 15 Januari 2004 dan pengambilan itu berlaku pada November 2006 (lihat perenggan 23–26 & 28).

(3) Penaksiran pembantah ke atas tanah tersebut pada RM715,906 seekar adalah sangat tinggi dan tidak berpatutan kerana tidak mengambilkira

nilai bangunan dan tanam-tanaman. Nilai tanah yang dilaraskan pada RM660,800 boleh diterima kerana kenaikan 13% dalam masa 33 bulan adalah wajar (lihat perenggan 29 & 31).

(4) Disebabkan tiada peruntukan dalam Kanun Tanah yang membenarkan pampasan untuk faedah yang dikenakan terhadap pinjaman, faedah yang dituntut oleh pembantah tidak dibenarkan. Pampasan untuk penempatan semula kenderaan-kenderaan bermotor tersebut juga tidak dibenarkan disebabkan pembantah tidak mengemukakan keterangan menunjukkan bahawa dia telah memohon untuk perubahan syarat tanah tersebut untuk pertanian digunakan untuk tujuan komersial. Walau bagaimanapun, pembantah berhak ke atas kos kerja-kerja meratakan tanah tersebut kerana ini merupakan pemulihan ke atas tanah tersebut yang menaikkan nilai tanah tersebut yang menjadikannya berhak ke atas pampasan di bawah s 60(2) Kanun Tanah itu. Selanjutnya, pembantah berhak kepada ganti rugi bagi pelepasan tanah tersebut kerana dia telah mengalami kerugian akibat daripadanya. Oleh itu, pembantah telah membuktikan bahawa award asal tidak berpatutan dan dia berhak kepada pampasan sejumlah RM1,457,724.80 yang telah mengambilkira kos meratakan tanah tersebut sebanyak RM68,000 dan kerugian pelepasan sebanyak RM9,284.80 (lihat perenggan 33–35, 38–39, 41 & 41(a)).]

Notes

For cases on award, see 8(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 2067–2122.

Cases referred to

Bukit Rajah Rubber Co Ltd v Collector of Land Revenue, Klang [1968] 1 MLJ 176, HC (refd)

Chuah Say Hai & Ors v Collector of Land Revenue, Kuala Lumpur [1967] 2 MLJ 99, HC (refd)

Er Boon Yan & Ors v The Collector of Land Revenue, Port Dickson [1955] MLJ 133 (refd)

Legislation referred to

Sarawak Land Code (Cap 81) ss 48, 56, 60(2)(a)

Alvin Yong (Chong Brothers Advocates) for the objector.
Ivy Suli (State Legal Officer) for the respondent.

Yew Jen Kie J:

[1] This is the land reference pursuant to s 56 of the Sarawak Land Code (Cap 81) ('Sarawak Land Code') in respect of Lot 820 Block 60 Sarikei Land

District ('SLD') (part of Lot 134) Block 60 SLD containing an area of 2.2060 hectares more or less ('the subject land'), which was acquired by the government under s 48 of the Sarawak Land Code (Cap 81) ('the Land Code') for the purpose of proposed fire station, Sarikei.

[2] The objector, Benging Motors Sdn Bhd, the registered proprietor of the subject land, was paid a total compensation in the sum of RM1,280,057 at RM500,000 per hectare, comprising land (RM1,103,000), building (RM175,850) and crops (RM1,207) by the Superintendent of Lands and Surveys, Sarikei.

[3] The award did not take into account site improvement, damages from severance, interest from loan incurred and costs from relocating the motor vehicles.

[4] The objector received the award under protest. Hence the present land reference.

EVIDENCE OF THE OBJECTOR

[5] The objector called three witnesses. PW1 Chiew Nyuk Ing (f), managing director of the objector, testified that the purchase of the subject land was financed by a loan of RM1,000,000 from RHB Delta Finance Bhd with interest at the rate of 6.90%pa as from 16 January 2004 (confirmed by PW2, the solicitors who prepared the sales documents). The total interest paid to RHB Delta Finance was RM259,092.20.

[6] According to PW1, she bought the subject land for the purpose of teaching driving center for which at lease five acres (more than two hectares) of land area is required.

[7] PW3 Michael Wee Kheng Kiong, the objector's valuer who prepared the objector report ie exh P2, testified that the government acquired Lot 820 comprising an area of 2.4870 hectares (about 6.15 hectares) more or less but the actual area required is 2.2060 hectares more or less. His valuation is based on the value of the land as at 23 January 2006 and for 2.2060 hectares now described as Lot 1341 Block 60 SLD.

[8] PW3, using comparison method of valuation, had selected four sales for comparison purpose. These four sales were chosen for the following reasons:

(a) Date of transactions are close to the date of s 48 notification ie 23 November 2006.

(b) They possess similar features to the subject land ie near the main road and same tenure.

(c) They are level land which do not require earth filling, except for sale No 4.

(d) At the time of acquisition in November 2006, these areas are developed. There are residential houses, warehouses, car service center, school, sawmills near the subject land.

[9] PW3 testified that the objector had expended a total sum of RM1,975,634.96 as follows:

(i)	Purchase price:	RM1,628,425
(ii)	Paid Loan interest:	RM259,092
(iii)	Land improvement:	RM68,000
(iv)	Damage for severance:	RM20,116.96
TOTAL		RM1,975,634.96

[10] Thus, the award of RM1,280,057 would make the objector suffer a net loss of about RM500,000 from his bona fide purchase on 15 January 2004.

RM1,975,634.96 –1,280,057 =	RM695,577.96
Less value of remaining portion of 0.281 hectares	RM181,052.63
Total nett loss	RM514,525.33

[11] Based on the four comparable sales, PW3 opined that the average analysed and adjusted market value for the land component of the subject land, as at 23 November 2006 is RM715,906 per hectares. Thus, the fair amount of compensation to the objector ought to have been RM2,110,054.60 including the building, improvement, crop, damages for severance, paid bank interest and costs of removal of motor cars from the subject land.

[12] PW3 said that the general trend of land price in Sarikei especially near the main road, and within three miles from town, are on the rise and gong up every year due to great demand for land near town area.

EVIDENCE OF THE RESPONDENT

[13] DW1 Angela Oyo Eng is the respondent's valuer who prepared the respondent's report ie P3. Appendix C of P3 is the table showing the analysis. DW1 selected seven sales of the lands in the region and five influencing factors, namely, location, accessibility, size, shape and date of transaction. The

common factors, which affected the valuation, were being identified and given weight according to their respective importance to the value of the land by using quality point rating ('QPR'), which is a scoring system based on values between 1 and 10, the higher the value, the better the scores. After all the scores were given for each of the comparable sales, it was then multiplied to the weights identified earlier to assess the overall impact of each factor to the comparable sales and the subject land.

[14] Based on the analysis as shown in Appendix C of P3, DW1 evaluated the average value for the subject land at RM511,894.95 per hectare as at 23 November 2006. She then concluded that RM500,000 is the reasonable rate for compensation after rounding the sum down.

THE ASSESSORS' OPINION

[15] The first assessor identified comparable sale Nos 5 and 6 used by the respondent and sale Nos 1 and 2 used by the objector as common comparable sale. Based on the common sale comparables and after making due adjustments for variables like time, size, term lease and location, the first assessor's adjusted price ranged from RM452,536 to RM748,896 per hectare.

[16] However, the first assessor opined that the best comparable would the sale of the subject land. According to the memorandum of transfer, the sale took place on 15 January 2004. The adjusted price on the subject land is RM671,000 per hectare.

[17] The second assessor opined that DW1 has not given concrete reasons for the weightage assigned to every factor ie 0.25 for location and accessibility, 0.2 for size and shape and 0.1 for date of transfer.

[18] The second assessor made adjustments based on four common comparable sales ie sale Nos 3, 4, 5 and 6 used by the respondent and sale Nos 1, 2, 3 and 4 used by the objector. After taking into account various factors like date of transfer, shape and size of the land, accessibility and layer (*lapisan*) which affected the value, the second assessor opined that the market value of the subject land ranged from RM578,000 to RM660,800 per hectare.

DECISION

[19] It must be highlighted that DW1 is not the valuer of the original award. In my opinion, the original valuation of the respondent is erroneous and unreliable. This is evidenced by the downward adjustment of RM511,894.95 to RM500,000, for which DW1 could not accord a reasonable explanation. To my mind, if a round up has to be made, it is normal practice to round up to the

next nearest figure, which in this case would be RM512,000. The question to be asked is why was RM511,894.95 not round up to RM512,000? DW1 could not explain why she had not round up to RM512,000. In the absence of a reasonable explanation, the reasonable inference is that this unexplained round up to RM500,000 is to fit into the valuation of the previous valuer.

[20] DW1 did not consider the original purchase price of the subject land because she was unsure whether the value was an added value ie whether it included the house. If that was her concern, DW1 could have just deducted the value of the house which was valued at RM175,850 and other added value.

[21] The respondent used seven comparable sales while the objector used four comparable sales. Amongst them, the respondent's sale No 5 (Lot 266) and sale No 6 (Lot 314) are the same as objector sale No 1 and sale No 2 respectively. Lot 324 ie the respondent sale No 2 is only selected by the respondent.

[22] The adjusted values of these three comparable sales ranged from RM452,536 to RM748,896 per hectare.

[23] In my opinion, the most reliable market value is found in the evidence of the bona fide sale of the subject land itself. The sale was on 15 January 2004 and the acquisition in November 2006. I find support in the following authorises.

[24] In *Bukit Rajah Rubber Co Ltd v Collector of Land Revenue, Klang* [1968] 1 MLJ 176, Raja Azlan Shah J (as His Majesty then was) held, 'evidence of sales of the same land was the safest guide for determining the market value of the land acquired'.

[25] In *Chuah Say Hai & Ors v Collector of Land Revenue, Kuala Lumpur* [1967] 2 MLJ 99, Gill J (as he then was) held:

> It is clear from the authorities that where the land acquired was purchased by the owner within a reasonable time of its compulsory acquisition, the price paid affords infinitely the best material for calculating its market value, the reasons being that elements of dissimilarity will be least present when the transaction sought to be applied is a previous purchase of the same property. The owner of course, can show that since his purchase there has been an all round increase in the price of land generally in which case a proper allowance can be made for such increase (see also *KP Frenchmen v Assisstant Collector Haveli* AIR 1922 Bom 399 and *Wan Mohamed v Collector, Kota Bharu* [1968] 2 MLJ 64).

[26] The objector purchased the subject land two years eleven months before its compulsory acquisition, which in my view is within the reasonable period of its compulsory acquisition. Thus, the purchase price paid by the objector for the subject land affords the best material for calculating its market value.

[27] The authorities have also shown that it is wrong to compensate land owners, whose land have been compulsorily acquired, less than they have paid for the land in question. In *Er Boon Yan & Ors v The Collector of Land Revenue, Port Dickson* [1955] MLJ 133, Abbot J, held:

> …the assessor and I feel that it could be never correct procedure to compensate persons, where land have been compulsorily acquired, by offering them substantially less than what they have paid for that land particularly in this present case where land have been bought by applicants so shortly before the acquisition took place.
>
> It could never be a sound proposition that a man dispossessed of his property could be required to make a financial sacrifice except he was willing to do so. In our view, the proper amount to be awarded is the amount which each applicant paid.
>
> The applicants may have paid more than other people would have paid for the land-they may even have paid more than the land was worth to a cautious purchaser but, even so, the principle remains the same. Different consideration might apply in any case where it could be shown that a purchaser speculated in the purchase of land on the chance that it would be acquired by the government.

[28] The subject land was purchased on 15 January 2004 at the sum of RM1,628,425.

[29] The objector evaluated the value of the subject land as at the date of valuation to be RM715,906 per hectare, which I consider is high and unreasonable. This is because the valuation has not taken into account the value of the building (RM175,850) and the crops (RM1,207).

[30] The land value after deducting the building and crops is RM583,582.23 per hectare (RM1,628,426 minus (RM175,850 + RM1,207); or RM1,451,369 divide 2.487 hectares = RM583,582.23 per hectare.

[31] I accept the second assessor's valuation that the adjusted value for the subject land is RM660,800 per hectare. To my mind, an increase of 13% over 33 months period is reasonable. Thus, the compensation should have been RM 1,457,724.80 (RM660,800 x 2.206 hectares).

BANK LOAN

[32] It was contended for the objector that the objector had taken out a loan from RHB Bank to purchase the subject land for which the objector had to pay interest amounting to RM259,092.

[33] I cannot find a provision in the Sarawak Land Code which allow for compensation for the interest incurred on loan. Hence, I disallowed it.

COST OF RELOCATION FOR MOTOR VEHICLES

[34] It was contended for the respondent that the subject land is conditioned for agriculture. However, PW1 evidence shows that the subject land had been used as trade-in car center and the intended teaching driving center. In the course of trial, the objector has not adduced proof to show that the objector had applied for variation of title condition for the subject land to be used as commercial purposed. It was submitted that the objector is not entitled to claim for compensation for relocation of motor vehicles because of the illegal usage of the subject land.

[35] I have no reason to disagree. Hence, it is proper that no compensation was made for the relocation of motor vehicles.

COSTS OF LEVELLING WORK

[36] PW1 and PW3 gave evidence that the objector had leveled the subject land for the purpose of expanding the car depot to accommodate trade-in vehicles. The cost of leveling came up to RM68,000 as evidenced by the receipts at Appendix H of P2. Their evidence was not challenged.

[37] It was contended for the respondent that the objector is not entitled to the costs of leveling work because the purpose of leveling was for expansion of car depot and the use of the subject land for commercial purpose is against the condition of the land title.

[38] With respect, I disagree. It is undisputed fact that the leveling of soil was done two years three months before the publication of the notification. The costs incurred was not in dispute. There is little argument that the leveling of the ground is an improvement to the subject land which would enhance the value of the subject land. Thus, pursuant to s 60(2)(a) of the Sarawak Land Code, the objector ought be compensated.

DAMAGE FOR SEVERANCE

[39] It is undisputed fact that the remaining area of the subject land after acquisition is 0.281 hectare compared to the original area of 2.487 hectare. Undoubtedly, the subject land with its original size has the potential of being developed into mixed development area comprising of residential houses as

well as shop houses. Now, with severance, the remaining size would only be sufficient to develop into five plots of detached house. Hence, in my view, the objector has suffered loss in severance.

[40] The loss suffered would be:

Before acquisition	
2.487 hectares @ RM660,800 (land value) =	RM1,643,409
Less	
After acquisition	
0.281 hectares @ RM627,760.00* =	RM176,400.56
Paid compensation + severance	RM146,700.90
Less	
Paid compensation at 2.206 hectares @ RM660,800	RM1,457,720.80
Loss of severance	RM9,284.80

Less 5% from RM660,800 per hectare due to area of balance after acquisition still can be developed into five plots of detached house.

CONCLUSION

[41] Based on all the reasons aforesaid, I am satisfied that that the objector has proven that the original award is inadequate. In my opinion, the fair and reasonable compensation should be as follows:

[42] Compensation payable for the land value of the subject land as at the date of valuation is RM 1,457,724.80.

(a)	Difference in fair market value of subject land at RM660,800 per hectare	RM354,724
(b)	Cost of land levelling	RM68,000
(c)	Loss of severance	RM9,284.80
	RM432008.80	
(d)	No order as to costs.	

A

(e) Interest at 4%pa on RM354,724 from date of taking possession till full settlement.

(f) Fee of RM100 to each assessor be borne equally by the parties.

B

Claim allowed in part with no order as to costs.

Reported by Kohila Nesan

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